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CHEW SIANG JIN

v.

LAU CHEE CHING & ORS

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HIGH COURT SABAH & SARAWAK, MIRI
SULAIMAN DAUD JC
[SUIT NO: 22-01-95(MR)]
15 DECEMBER 2000

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TRUST: *Resulting trust - Purchase money - Purchasers contributing to purchase price of property in equal shares - Whether purchasers joint tenants - Whether 1st defendant a constructive or implied trustee of deceased's one half share for deceased's estate - Property registered in name of third defendant company - Lifting of corporate veil*

d

LAND LAW: *Indefeasibility of title and interests - Resulting trust - Defeasibility of title through beneficial interests and trusts - Civil Law Act 1956, s. 3 - Applicability of English Statute of Frauds 1677 and Law of Property Act 1925*

e

The plaintiff brought an action against the defendants seeking, *inter alia*: (i) a declaration that the third defendant held four units of commercial shophouses on trust for the estate of the deceased and the first defendant in one half (1/2) undivided share each; (ii) a declaration that the estate of the deceased was entitled to one half (1/2) undivided right, title, share and interest in the said four units of commercial shophouses; and (iii) an order that the first and second defendants do sign or execute all the necessary documents to facilitate the transfer of one half (1/2) undivided share in the said four units of commercial shophouses to the estate of the deceased.

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The main issues for determination were: firstly whether the third defendant was a constructive or implied trustee in respect of the deceased's one half share; secondly whether the third defendant was a separate legal entity from the first defendant; and thirdly whether the third defendant as registered owner was conferred with indefeasibility of title in respect of the said shop lots.

Held:*h*

[1] Under the doctrine of the court of equity, a "purchase money" resulting trust will be presumed where joint owners provide the purchase money for the acquisition of the property in equal shares. In such a case, they will be presumed to hold the property on resulting trust for themselves as tenants in common in the proportions to which they contributed to the purchase. If they contributed equally to purchasing the property, it will be held as joint tenants for them both. On a balance of probabilities the

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plaintiff's version was the more credible and probable version. The deceased had contributed towards one half of the total consideration for the purchase price of the shop lots.

[2] All the affairs and businesses of the third defendant company were under the control of the first defendant whereas his wife, the second defendant, had no part in the running thereof. The third defendant company was formed by the first defendant to provide him the mask in an attempt to avoid recognition by the eye of equity for the purpose of defeating the plaintiff's claim on his father's right, share and interest in the four shophouses for the time being registered in the third defendant's name. The one share owned by the second defendant in the third defendant company was a mere formality to comply with the requirements of the Companies Act 1965. The justice of the case demanded the court to lift the corporate veil of the third defendant company. The third defendant company eventhough owned by the first and the second defendants was wholly under the control of the first defendant and its assets were in fact the assets of the first defendant.

[3] The Torrens system which provides for indefeasibility of title to the registered owner of land does not prevent or restrict the creation of beneficial interest in land by way of expressed, implied or resulting trust arising by operation of law in Malaysia by virtue of s. 3 of the Civil Law Act 1956. It does not abrogate the principles of equity but alters the application of particular rules of equity in so far as is necessary to achieve its special objects. The title of the third defendant in respect of the shop lots can be made defeasible on grounds other than fraud. The plaintiff's deceased father, having contributed towards the purchase price thereof, had an interest in the four shop lots by way of implied or resulting trust by reason of which the third defendant's title thereto could be made defeasible.

[4] An implied or resulting trust need not be in writing and that the Statute of Frauds 1677 and the Law of Property Act 1925 [UK] have no application in Sarawak.

[Judgment for plaintiff; defendants' application for stay allowed.]

Case(s) referred to:

Bank Bumiputra Malaysia Bhd & Anor v. Lorrain Osmain & Ors [1985] 2 MLJ 236 (*refd*)

Beh Lee Liang v. Chew Sah Suak & Anor [1996] 1 CLJ 173 (*refd*)

Chan Foo Meng & Ors v. Hup Seng Co Ltd [1987] 2 CLJ 431 (*dist*)

Development and Commercial Bank v. Lam Chuan Company & Anor [1989] 1 CLJ 192 (*dist*)

Dyer v. Dyer [1788] 2 Cox Eq Cas 92 (*refd*)

Fels v. Knowles 26 NZLR 604 (*refd*)

- a** *Kho Kwang Choon v. Phuman Singh* [1968] 1 MLJ 183 (**refd**)
Lee Phek Choo v. Ang Guan Yau [1975] 2 MLJ 146 (**refd**)
Lian Keow Sdn Bhd & Anor v. Overseas Credit Finance (M) Sdn Bhd & Ors [1988] 2 MLJ 449 (**refd**)
Liew Choy Hung v. Fork Kian Seng [2000] 1 CLJ 369 (**refd**)
Loo Cheng Suan Sabrina v. Khoo Oon Jin Eugene [1995] 1 MLJ 115 (**refd**)
- b** *Tan Cheng Hock v. Chan Tean Soo* [1987] 2 MLJ 479 (**refd**)
Tay Guan Ho v. Chin Huat Hin [1987] 2 MLJ 704 (**fol**)
Teh Bee v. K Maruthamu [1977] 2 MLJ 7 (**refd**)
Wilkin & Ors v. Kannammal (f) & Anor [1951] MLJ 99 (**refd**)

Legislation referred to:

- c** Civil Law Act 1956, s. 3
Land Code (Cap 81) (Sarawak), ss. 132, 134

Other source(s) referred to:

Principles of Property Law, Samatha J Hepburn, Cavendish Publishing

- d** *For the plaintiff - Fabian AH Lim; M/s Lim & Lim Advoc*
For the defendant - KY Lin; M/s Kadir, Wong, Lin & Co

JUDGMENT

Sulaiman Daud JC:

- e** By a writ issued on 8 July 1995, the plaintiff brought an action against the defendants seeking, *inter alia* (i) a declaration that the third defendant holds four units of commercial shophouses on trust for the estate of the deceased and the first defendant in one half (1/2) undivided shares each; (ii) a
- f** declaration that the estate of the deceased is entitled to one half (1/2) undivided right, title, share and interest in the said four units of commercial shophouses; and (iii) an order that the first and second defendants do sign or execute all the necessary documents to facilitate the transfer of one half (1/2) undivided shares in the said four units of commercial shophouses to the estate of the deceased.
- g** The brief history as established by the evidence and agreed between the parties can be summarised as follows. By an agreement in writing dated 26 Mac 1981 (“the agreement”) entered into between one Chong Chin Choi (PW2) as the vendor on the one part and Chew Sek Kee, deceased, and the first defendant
- h** as the purchaser on the other part, the vendor agreed to sell to the purchaser six commercial shop lots (“the shop lots”) for a total purchase price of RM360,000 of which the sum of RM160,000 shall be payable upon signing of the agreement, RM80,000 on or before 15 Jun 1981 and RM120,000 within seven days of the approval of certain specified plans in respect thereof.
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Pursuant to such agreement, on 31 March 1981 both the deceased and the first defendant, as purchaser in the said agreement, lodged a caveat in respect of each of the shop lots. The document of titles in respect of the six shop lots were issued on 13 August 1984, that is few months before the said Chew Sek Kee passed away in November 1984. The six shop lots remained registered in the name of the vendor until they were transferred on 24 July 1986 directly from the vendor to the third defendant, Taman Golsbury Development Sdn. Bhd. of whom the first defendant and his wife, the second defendant, are the shareholders and directors. On 30 September 1986 the third defendant as the registered owner of the six shop lots entered into a development agreement in writing with one Chang Chin Yu trading under the style of Chang Builders (“the contractor”) whereby the contractor agreed to build six units of double storey commercial shophouses (“the shophouses”) on the said shop lots at its own costs and expenses. In consideration thereof the third defendant agreed to transfer to the contractor three of the six units of such shophouses upon the completion thereof. By a subsequent agreement made between the third defendant and the contractor, it is agreed that the contractor’s entitlement under the principal agreement be reduced from three units to two units of the shophouses.

The plaintiff in this action is the executor of the estate of the said Chew Sek Kee (“deceased”) by virtue of the deceased’s will dated 28 August 1984 in respect of which letter of probate and supplementary probate, as the case may be, were granted to the plaintiff on 23 August 1985 and 27 May 1995 respectively. In para 12 of the re-amended statement of claim the plaintiff averred that the third defendant was in law a constructive and or implied trustee holding one half (1/2) of the undivided right, title, shares and interest in the said four units of shophouses on behalf of the estate of the deceased.

So much of the fact and I will now deal with issues raised by the parties. The learned counsels for both the parties agreed that the main issues for determination are, firstly whether the third defendant is a constructive or implied trustee in respect of the said Chew Sek Kee’s, deceased, one half share; secondly whether the third defendant is a separate legal entity from the first defendant; and thirdly whether the third defendant as registered owner is conferred with indefeasibility of title in respect of the said shop lots.

Whether The Third Defendant Is Constructive Or Implied Trustee In Respect Of Chew Sek Kee, Deceased, One Half Share

The crucial question to be answered in this action is whether the third defendant is to be considered as a trustee of the deceased Chew Sek Kee in respect of one half share of the four shop lots. It is an established doctrine of the court of equity that a “purchase money” resulting trust will be presumed

- a* where joint owners provide the purchase money for the acquisition of property in equal shares. In such a case, they will be presumed to hold the property on resulting trust for themselves as tenants in common in the proportions to which they contributed to the purchase. If they contributed equally to buying the property, it will be held as joint tenants for them both (See *Samantha J Hepburn: Principles of Property Law*, Cavendish Publishing).
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In the case of *Dyer v. Dyer* [1788] 2 Cox Eq. Cas 92 Lord Chief Baron (Eyre), after being referred to string of authorities on resulting trust, stated at p. 43 as follows:

- c* The clear result of all the cases, without a single exception, is, that the trust of a legal estate ... whether taken in the name of a purchaser and others jointly, or in the names of others without that of a purchaser, whether in one name or several, whether jointly or successive, result to the man who advances the purchase money. This is a general proposition supported by all cases, and there is nothing to contradict it.
- d* Before I proceed further on the question of trust the pertinent question to be answered at the outset is whether the deceased had paid one half of the purchase price for the six shop lots as pleaded by the plaintiff. With regard to such payment, both the plaintiff and the first defendant have given different and conflicting version in their testimonies. As a trier of facts it will be my
- e* task to determine where the truth lies. In coming to any finding Edgar Joseph Jr J (as he then was) in the case of *Tan Cheng Hock v. Chan Tean Soo* [1987] 2 MLJ 479 said as follows:
- f* ... that my decision must depend on the credibility of the parties and that my assessment of their credibility will be the decisive consideration. In arriving at my finding as to credibility, I did not rely solely on demeanor for that has to be balanced against the rest of the evidence and the probabilities of the case.
- It may be well to also remember what was said by Lord Wrighten and often quoted from his judgment in *Powel & Wife v. Stretham Manor Nursing Home* [1935] AC 243, of the possibility of judges being deceived by adroit or
- g* plausible knaves or by apparent innocence.
- With such guidance, I will now consider the particular circumstances of the case which relate to the payment of the consideration of RM360,000 as the purchase price of the said six shop lots.
- h* PW2 Chang Chin Choi, who is the vendor of the six shop lots, testified that in March 1981 he entered into a sale and purchase agreement in respect of the six shop lots with Chew Sek Kee (deceased) and the first defendant. According to him in that year when he came back to Miri, the deceased and
- i* the first defendant came to his office and enquired whether he wanted to sell

the six shop lots. He agreed to sell the said lots to them for a total consideration of RM360,000. He further testified that he had obtained the approval of the engineering plans for the six shop lots in 1981 and that the last payment of the said purchase price for the sum of RM120,000 was made within one month after he had received the letter of such approval. He confirmed that the deceased and the first defendant came together to see him when they made the final payment. PW2 further said that all the payments were made by cheques but he could not remember from which bank. He disagreed that they were made in cash. PW2 also denied in cross-examination that the last payment was made in July 1982 or that it was made in cash.

PW1, an accountant of the third defendant, testified that in 1988 he personally prepared an account for the third defendant as in exh P1. He said that the figure RM459,032 under the heading "Current Liabilities" therein is the amount owing by the third defendant to the creditors. He further testified that the said sums of RM459,032 includes the sum of RM360,000 expended for the purchase of the six shop lots which came from the creditors mentioned in exh. P2 and P3. According to him in preparing exh. P1 he went to see the plaintiff on the instruction of the first defendant as the first defendant told him that part of the money came from the plaintiff's deceased father, the said Chew Sek Kee. He stated that the document written in the letterhead of Pamebo Sdn. Bhd. (exh. P3) was given to him by the plaintiff and contained the name of persons who contributed towards the total sum of RM180,000, being the deceased's shares for the purchase price of the said shop lots.

The plaintiff himself testified that PW1 had approached him on his father's half share in the six shop lots. According to the plaintiff, PW1 told him that he was asked by the first defendant to see him to get the name of the persons who have contributed towards his deceased father's share for the purchase of the six shop lots. He then wrote the particulars of such person on exh. P3.

The defendants' version in respect of the purchase price for the said shop lots can be summarised as follows. The first defendant (DW2) testified that the full purchase price for such lots was paid by him in cash in three installments in which the first payment for the sum of RM160,000 was made on the date of the agreement (26 March 1981), the second installment for the sum of RM80,000 was made around 15 Jun 1981. He couldn't remember the date when the payment for the final third installment was made.

With regard to exh. P2 and exh. P3, which contained the name of the persons who, according to PW1, have contributed towards the said purchase price of RM360,000, the first defendant testified that the said documents were made for income tax purposes. In this regard the learned counsel for the defendants contended that exh. P3 was given by the plaintiff to the PW1 for the purpose

- a* of helping the first defendant in solving his income tax problem. According to him exh. P3 was used by PW1 to prepare exh. P5, that is the letter sent by the third defendant to Jabatan Hasil Dalam Negeri to account for the said sum of RM457,032 as requested by the department. The learned counsel also pointed out that the plaintiff himself had admitted that the information given
- b* in exh. P3 is false. On the joint account he also contended that there is nothing in exh. P19 (record of the joint account) to show that the sum of RM360,00 was withdrawn therefrom.

- c* It is also the contention of the learned counsel for the defendants that the third defendant company was formed when the deceased was still alive but yet the titles to the six shop lots which have already been issued were not expressly included in his will. The deceased also signed the form for the withdrawal of the caveats lodged by him and the first defendant in respect of the six shop lots one day before his death on 16 November 1984. All these facts according to the learned counsel further support the defendants' case that the deceased
- d* had not contributed towards the purchase price of the said shop lots.

The Finding Of The Court

In deciding which of the aforesaid version is the most probable and credible, I have to consider the following matters:

- e* (i) PW2, the vendor, who has no quarrel with any of the parties to this action maintained that all the three installments of the purchase price were paid by cheques and that the deceased were present on all occasions when such payment were made. I have no reason to disbelief PW2.
- f* (ii) The fact that the caveat entered on 31 March 1981, that is three days after payment of the first installment, in respect of the six lots were in the joint names of the deceased and the first defendant is a strong indication that the deceased had title, share and interest in such lots.
- g* (iii) The evidence of PW1 who testified that he was instructed by the first defendant to approach the plaintiff to get the particulars of the contributors of the other half of the purchase money of RM180,000 is not challenged except that the first defendant asserted that it was made for tax purposes. Such assertion was denied by PW1.
- h* (iv) The plaintiff (PW4) admitted that the matters specified in exh. P3 was not true since it has been his assertion that the said sum was paid by his father. The fact remains that the first defendant, as in exh. P2, only contributed towards the other half of the total purchase price.
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- (v) With regard to the statement of the joint account (exh. P19), there was no entry of withdrawal in respect of the first installment for the sum of RM180,000 on or around 26 March 1981. As to the second installment of RM80,000 which was due on 15 June 1981, there was a withdrawal on 4 July 1981 for the sum of RM80,000. It is common knowledge that in the case of withdrawal by cheque, the record of such withdrawal will only be shown in the account to which it relates when the amount withdrawn is debited therefrom upon the clearance of the cheque. As such in my opinion a reasonable inference can be made that the sum of RM80,000 debited on 4 July 1981 was used for the payment of the second installment. With regard to the third installment of RM120,000 there were three withdrawals made in February 1982 for the total sum of RM130,000. In my view an inference can also be made that such sum was also utilised for the payment of the final installment. Having made such inferences it can also be reasonably concluded that the deceased had also contributed towards one half of the first installment of RM160,000 which was paid on the date of the execution of the agreement. a
- (vi) The testimony of the defendant that he paid all the three installments himself in cash is not consistent with the evidence of PW2 which in my view is more credible. If it is true that he paid the money himself why did he lodge the caveat jointly with the deceased immediately after the execution of the agreement and payment of the first installment. His assertion that the deceased had no money to pay his part of the installment of the purchase price is also not consistent with the credit balance of the joint account at the material time or the assets of the deceased at the time of his death. b
- (vii) On the withdrawal of the caveats, the fact that such caveats were only withdrawn on 1 April 1986, that is after the death of the deceased on 16 November 1984, further support the plaintiff contention that the instruments for such withdrawal have been earlier pre signed by the deceased and not one day before his death as asserted by the first defendant. c
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Based on the above considerations it is my finding on the balance of probabilities that the plaintiff's version is the more credible and probable version and I so hold. It is my finding that the deceased Chew Sek Kee had contributed towards one half of the total consideration for the purchase price of the six shop lots. h

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a The Third Defendant As A Separate Legal Entity

b It is also the contention of the learned counsel for the defendants that the third defendant, the entity for the time being registered as the owner of the said six shop lots, is a separate legal entity and that there is no arrangement that the third defendant is to be a trust company. As such he concluded that the first defendant retained no legal rights in the four shop lots that the vendor transferred to the third defendant. The learned counsel cited two cases which I shall hereafter refer. The first case is *Development and Commercial Bank v. Lam Chuan Company & Anor* [1989] 1 CLJ 192. In that case the plaintiff attached certain properties at a premises which at the time of judgment was occupied by the defendant judgment debtor but which at the time of attachment was occupied by the claimant. The claimant was incorporated two days after the defendant was wound up. The plaintiff urged the court to infer that the setting up of the claimant was actually to defraud the plaintiff as the judgment creditor. It was held that the claimant is a separate legal entity from the defendant and that it was the lawful owner of the attached property seized.

c The other case referred to is *Chan Foo Meng & 68 Others v. Hup Seng Co Ltd* [1987] 2 CLJ 431 which concern the sale and purchase of certain piece of land. In that case all the plaintiffs lived on the said land and paid ground rent for their respective plots to the registered proprietor who decided to sell the said land to them. A sale and purchase agreement was executed between the registered owner and Tai Wah and four others on behalf of the purchasers. The remaining portion of the land was subsequently transferred to Tai Wah and three others who later transferred the same to the defendant. The plaintiffs claim on the said land was dismissed on the ground that they have failed to prove that the defendant company is their trustee and that the company have purchased the land directly from the four named persons as purchaser and not as trustee.

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g Based on the aforesaid authorities the learned counsel submitted that when the six shop lots were transferred to and registered in the name of the third defendant such property becomes the assets of the third defendant company and that neither the deceased nor the first defendant has any legal right thereto. He further argued that in the present action there is a direct purchase of the said six shop lots from PW2 and that the sale and purchase agreement dated 26 March 1981 clearly defined the purchaser to include the successor in title, legal representatives, assigns or nominees of the purchaser. Thus he concluded that it is perfectly right for the six shop lots to be transferred to and registered in the name of the third defendant. With respect I am of the view that the cases referred to by the learned counsel do not support the proposition for which they are advanced. The case of *Development and Commercial Banks Bhd. v. Lam Chuan Company & Anor* is related to the ownership of attached

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property seized whereas the present action is in respect of claim on property based on the existence of an implied or resulting trust. The fact in *Chan Foo Meng & 68 Ors v. Hup Seng Co. Ltd* can be easily distinguished with that of the instant case. In that case it is clear that the defendant company purchased the said land directly from the four named persons whereas in the instant case the six shop lots were sold by the vendor to the deceased and the first defendant who were named as purchaser in the sale and purchase agreement thereof. In view of my earlier finding that one half of the purchase price of the six shop lots was contributed by the plaintiff's deceased father I cannot accept the contention of the learned counsel that the third defendant does not hold the land as trustee for the plaintiff's deceased father. Another distinguishing factor is that in the instant case there is also no direct sale of such lots from the vendor to the third defendant.

On this issue the learned counsel for the plaintiff contended that the third defendant company belongs to the first defendant and his wife (DW1) holding one share each in the company. DW1 testified that she did not take part in the purchase of the said six shop lots and that all transaction in respect thereof were done by the first defendant. The learned counsel also pointed out that the first defendant also runs and controls the affairs of the third defendant company and his wife does not take part in the running thereof. Based on such circumstances the learned counsel submitted that this court can lift the corporate veil of the third defendant company to see whether the company and its shareholders, that is the first defendant and the third defendants were in fact the same entity. For this proposition the learned counsel made reference to the case of *Bank Bumiputra Malaysia Bhd & Anor v. Lorrain Osman & Ors* [1985] 2 MLJ 236 where the court lifted the corporate veil of the companies owned and controlled by Lorrain Osman to enable the bank to attach the assets of the companies of Lorrain Osman as if the assets are the assets of Lorrain Osman. In that case Zakaria Yatim J said at p. 234:

In *Salomon v. Salomon*, the House of Lord laid down the principle that a company is a separate legal entity from its shareholders. But this principle does not prevent the court from lifting the corporate veil. In *Littlewoods Mail Order Store Ltd v. Inland Revenue Commissioners*, Lord Denning MR said at page 1254, "The doctrine laid down in *Salomon v. Salomon & Co.* has to be watched carefully. It has often been supposed to cast a veil over the personality of a limited company through which the court cannot see. But that is not true. The court can and often do draw aside the veil. They can, and often do, pull the mask. They look to see what really lies behind.

I agree with the learned counsel for the plaintiff that on the evidence before this court all the affairs and businesses of the third defendant company is under the control of the first defendant whereas his wife, the second defendant, has no part in the running thereof. It is without doubt to me that the third

- a* defendant company was formed by the first defendant to provide him the mask in an attempt to avoid recognition by the eye of equity for the purpose of defeating the plaintiff's claim on his father's right, share and interest in the four shophouses for the time being registered in the third defendant's name. It is obvious to me that the one share owned by the second defendant in the
- b* third defendant company is a mere formality to comply with the requirements of the Companies Act 1965. In the circumstances I am of the view that justice of the case demands the court to lift the corporate veil of the third defendant company. In lifting the corporate veil I do not hesitate to conclude that the
- c* third defendant company eventhough owned by the first and the second defendants is wholly under the control of the first defendant and that its assets are in fact the assets of the first defendant.

Indefeasible Title

- d* The next objection taken by the defendants is that the court has no power under ss. 132 and 134 of the Land Code (Cap 81) to make the declaration or to transfer the two units of shophouses on the said land in favour of the plaintiff as prayed. The learned counsel for the defendants submitted that as the registered owner of the said land the third defendant company is conferred with indefeasibility of title which can only be made defeasible in case of fraud and since there is no allegation of fraud on the part of the plaintiff, than the
- e* third defendant's title to the said land cannot be made defeasible. Counsel referred to string of cases which relate to indefeasibility of title, which include the case of *Beh Lee Liang v. Chew Sah Suak & Anor* [1996] 1 CLJ 173; *Fels v. Knowles* 26 NZLR 604, *Kho Kwang Choon v. Phuman Singh* [1968] 1 MLJ 183, and *Teh Bee v. K Maruthamu* [1977] 2 MLJ 7.

- f* The principle laid down in those cases can be summed up in *Teh Bee's* case where Ali Ag CJ (Malaya) (as his lordship then was) stated at p. 12:

- g* Under the Torren System the register is everything. So said S.K. Das on page 102 of his book on the Torren System in Malaya. I need only refer to two Privy Council cases *Creelman & Anor v. Hudson Bay Insurance Company* and *Alan Frederic Frazer v. Douglas Hamilton Walker* which decided to the same effect. In *Creelman & Anor v. Hudson Bay Insurance Company* which was an appeal from British Columbia, Lord Buckmaster delivering the judgment of the Judicial Committee said on p. 197:

- h* Their lordships are unable to accede to either of these propositions. In their opinion the certificate of title referred to in section 22 of the Land Registry Act is a certificate which, while it remains unaltered or unchallenged upon the register, is one which every purchaser is bound to accept. And to enable an investigation to take place as to the right
- i* of the person to appear upon the register when he holds the certificate which is evidence of his title, would be to defeat the very purpose and object of the statute of registration.

In the case *Kho Kwang Choon v. Phuman Singh* [1968] 1 MLJ 183, William J said at pp. 1841-185B:

Having considered the legislation immediately pertinent to this case, namely the Land Code (Cap. 81, of the Laws of Sarawak), I have come to the conclusion, and most certainly so in the absence of fraud, that once an interest is registered the court has no power to remove or even order the removal of the name of a proprietor therefrom in the manner there prayed.

In reply the learned counsel for the plaintiff submitted that the third defendant is not a *bona fide* purchaser for value and without notice because it did not pay for the purchase price of the shop lots and that the first defendant is the alter ego of the third defendant company. The learned counsel referred to the following cases. In the case of *Liew Choy Hung v. Fork Kian Seng* [2000] 1 CLJ 369 it was held that if two or more persons purchased property in their joint names and there was no declaration of trust on which they were to hold the property, they held the property on a resulting trust for each other proportionate to their contribution of the purchase price subject to rebuttal of an evidence of an alternative intention. In the case of *Wilkin & Ors v. Kannammal (f) & Anor* [1951] MLJ 99 Taylor J states that the torrens law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of a particular rules of equity but only so far as is necessary to achieve its own special object. In the case of *Lian Keow Sdn Bhd (in liquidation) & Anor v. Overseas Credit Finance (M) Sdn Bhd & Ors* [1988] 2 MLJ 449 the Supreme Court held that the torren system which provides for indefeasibility of title to the registered owner of the land does not prevent or restrict the creation of beneficial interest in land by way of expressed, implied or resulting trust arising by operation of law in Malaysia by virtue of s. 3 of the Civil Law Act 1956. It does not abrogate the principles of equity but alters the application of particular rules of equity in so far as is necessary to achive its special objects.

In the case of *Loo Cheng Suan Sabrina v. Khoo Oon Jin Eugene* [1995] 1 MLJ 115 it was held that the title of a registered proprietor is defeasible in a case where the claimant could, by adducing facts or circumstances, proved on the balance of probabilities that the property was held in trust in his or her favour.

In view of the authorities cited as above it is without doubt that the title of the third defendant in respect of the shop lots can be made defeasible on grounds other than fraud. In the instant case it is my finding that the plaintiff's deceased father, having contributed towards the purchase price thereof, has an interest in the four shop lots by way of implied or resulting trust by reason of which the third defendant's title thereto can be made defeasible.

a Statute Of Frauds

b The learned counsel for the defendants also submitted that the alleged express trust is not in writing and as such it is not enforceable as the Statute of Frauds applies in Sarawak. He referred to the case of *Lee Phek Choo v. Ang Guan Yau* [1975] 2 MLJ 146 where the Federal Court held that as the Statute of Frauds applied in Sarawak and there was nothing to manifest a declaration of trust, it could not be said a trust was created in respect of the properties. However Lee Hun Ho CJ (as he then was) in the Supreme Court case of *Tay Guan Ho v. Chin Huat Hin* [1987] 2 MLJ 704 stated at p. 708 as follows:

- c** The particular provisions of the Statute of Frauds which we are concerned, that is section 7, was in fact, as stated earlier, repealed and re-enacted in section 53(1) of the Law of Property Act 1925 which provides that “declaration of trust respecting any land or any interest therein must be manifested by some writing”. Section 53(2) goes on to provide that the above requirements do not effect the creation of or operation of resulting trust, implied or constructive trusts ... The Property Law Act 1925 is not a Statute of general application.
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In view of the decision in *Tay Guan Ho* case it is can be concluded that an implied or resulting trust need not be in writing and that the Statute of Frauds 1677 and the English Law of Property Act 1925 has no application in Sarawak.

- e** In conclusion I repeat my earlier finding that the plaintiff has proved on the balance of probabilities that his deceased father had contributed towards one half of the purchase price of the six shop lots and that the deceased had a beneficial interest thereon by way of implied or resulting trust. Before making the declaration sought, at this stage I will recall that the learned counsel for the plaintiff had admitted that by virtue of the development agreement entered into between the third defendant and the developer, the third defendant is only entitled to three units of the complete shophouses built on the said shop lots. In the circumstances I declare that the third defendant holds three units of the shophouses registered in its name on trust for the estate of the deceased and the first defendant in one half (1/2) undivided shares each. It is further declared that the estate of the deceased is so entitled to such one half (1/2) undivided right title share and interest in that said three units.
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To give effect to such declarations it is ordered that:

- h** (a) one such unit of the shophouses as may be mutually agreed be transferred by the first and second defendants to the estate of the deceased within three months from the date of this order; and
- i**

(b) one other unit of the shophouses as may be mutually agreed to be sold by private treaty or public auction at such price as may be determined by a registered valuer to be jointly appointed by the parties. The proceeds of such sale, less all expenses incurred in respect thereof, is to be equally distributed between the parties. *a*

Provided that where there is no agreement as to the units to be transferred to the estate of the deceased or to be sold, such matter shall be further referred to the court for decision. I also award costs to the plaintiff to be taxed unless otherwise agreed. *b*

However on the application of the learned counsel for the defendants and with the consent of the learned counsel for the plaintiff, I allowed the stay in respect of the aforesaid order to maintain the *status quo* of the parties pending the disposal of the defendants' appeal to the Court of Appeal which according to their learned counsel will be filed in due course. *c*

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